

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COLEMAN WENDELL WALKER,

Defendant-Appellant.

UNPUBLISHED

August 21, 2007

No. 263278

St. Clair Circuit Court

LC No. 04-002502-FH

Before: Fort Hood, P.J., and Talbot and Servitto, JJ.

TALBOT, J. (*concurring*).

Although I concur in the result, I write separately regarding the interpretation of MCL 333.7405(1)(d) defining the operation of a drug house.

Evidence existed at trial that defendant had possession and control of illegal drugs within the subject home at the time of his arrest. Although disputed, sufficient evidence also existed that defendant had routine and free access to the residence as he retained keys to the premises, entered without notification and had a long-standing personal relationship with the owner. As such, sufficient ties and access to the home by defendant were demonstrated. What is lacking is evidence of more than one incident involving the presence or use of illegal substances by defendant at that location.

Even under the reduced standard of *People v Thompson*, 477 Mich 146; 730 NW2d 705 (2007), without further evidence that defendant kept and maintained the home “for the purpose of using controlled substances, or . . . for keeping or selling controlled substances” there is not sufficient continuity to uphold defendant’s conviction for violation of the statute. MCL 333.7405(1)(d). While it is no longer necessary to demonstrate that a defendant’s actions occurred “continuously for an appreciable period,” a certain level of continuity is still required to sustain a conviction for violation of MCL 333.7405(1)(d), as “incidental use of the property for keeping or distributing drugs or a single, isolated occurrence of drug-related activity will not suffice.” *Thompson, supra* at 156-157. Had the prosecutor presented evidence of the prior controlled buys involving defendant at the residence, which served as the basis to secure the warrant, defendant’s conviction for keeping and maintaining a drug house could have been upheld.

/s/ Michael J. Talbot